



ALAN WILSON
ATTORNEY GENERAL

June 20, 2011

RECEIVED

JUN 20 2011

S.C. Supreme Court

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: **Francis O. Campbell, 111197 v. State of South Carolina**
2006-CP-40-0402

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this Return today.

Sincerely,

Brian T. Petrano
Assistant Attorney General

Enclosures

cc: Wanda H. Carter, Esquire

The Supreme Court of South Carolina

Francis O. Campbell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable J. Michelle Childs
Richland County
Trial Court Case No. 2006-CP-40-00402

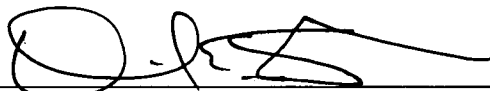
ORDER

The request for an extension until July 6, 2011 to serve and file the Return to the Petition for Writ of Certiorari is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



Clerk

Columbia, South Carolina

June 7, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Brian T. Petrano



ALAN WILSON
ATTORNEY GENERAL

June 6, 2011

RECEIVED

JUN - 6 2011

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

RE: Frances O. Campbell, 111197 v. State of South Carolina
2006-CP-40-0402

Dear Mr. Shearouse:

The Motion for Extension of Time to Serve and File Respondent's Return to Petition for Writ of Certiorari in the above appeal is due to be served and filed on today. However, this is to respectfully request a 30-day extension until July 5, 2011 in which to serve and file this Return.

This extension request is not intended for the purpose of delay. Rather, this extension request is necessitated by a heavy workload.

Sincerely,



Brian T. Petrano
Assistant Attorney General

BTP:jri

cc: Wanda H. Carter; SC Office of Appellate Defense

STATE OF SOUTH CAROLINA
In The SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

JUN - 6 2011

The Honorable J. Michelle Childs, Circuit Court Judge **S.C. Supreme Court**

Frances Owens Campbell, ...Petitioner,

v.

State of South Carolina,.....Respondent.

MOTION FOR EXTENSION OF TIME TO SERVE AND FILE
RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

COMES NOW the Respondent above named, by and through the undersigned counsel, making its motion to Relax Rule 243(g), SCACR, would show unto this Court:

I.

An extension request was previously filed, requesting 30 days additional time to file the Return to Petition for Writ of Certiorari. This Court informed the Respondent that the Respondent's filings were due by June 6, 2011.

The Respondent respectfully requests another extension to file the Return to Petition for Writ of Certiorari. The Respondent has been working diligently to properly handle all (non-capital) PCR matters on behalf of the State for the 5th circuit. The Respondent is currently preparing for the upcoming June 6th term of PCR court with The Honorable James R. Barber, III presiding. The Respondent is

also working on, or has submitted briefs/returns, on behalf of the State, for the following PCR appeals: Dexter Tucker and Xaiver Miguel.

Accordingly, and not for the purpose of delaying the Petitioner, the Respondent respectfully requests an extension of time to properly research for and prepare the State's Return to the Petition for Writ of Certiorari.

II.

In view of the foregoing, it is respectfully requested that this Court relax Rule 243(g), SCACR, and allow the Respondent another extension of time to file the Return to the Petition for Writ of Certiorari.

WHEREFORE, it is respectfully requested that this Motion be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: _____


ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina
June 3, 2011

The Supreme Court of South Carolina

Francis O. Campbell,

Petitioner,

v.

State of South Carolina,

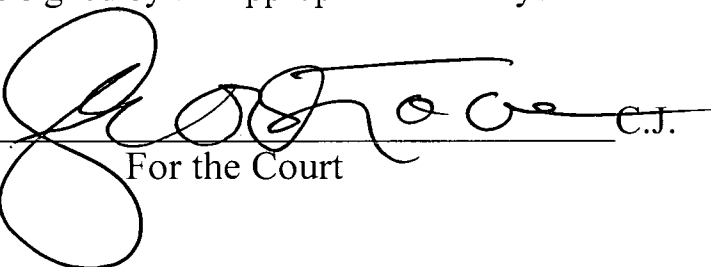
Respondent.

The Honorable J. Michelle Childs
Richland County
Trial Court Case No. 2006-CP-40-00402

ORDER

Petitioner seeks an extension until April 20, 2011 to serve and file the Petition for Writ of Certiorari and Appendix, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extensions will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



For the Court C.J.

Columbia, South Carolina

March 23, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Brian T. Petrano

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
J. Michelle Childs, Circuit Court Judge

ORIGINAL

RECEIVED

MAR 21 2011

S.C. Supreme Court

FRANCIS O. CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

(4)

The undersigned counsel would respectfully request a **final** thirty day extension in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. Petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by three prior orders of this Court.
2. Counsel is filing the petition for writ of certiorari in the case of Emmett Kelly v. State today. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Ernesto Ortiz v. State and Beryl Ray Johnson v. State on March 18, 2011. Additionally, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Kenwood Bright on March 14, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Nicholas Macklen on March 10, 2011. Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Devario Marshatt Simpson v. State, Walter Martez Thomas v. State, Vaughn Williams v. State, Terry J. Hardin v. State, and Darrell Keith Emory v. State on Monday, March 7, 2011. Counsel filed the petition for writ of

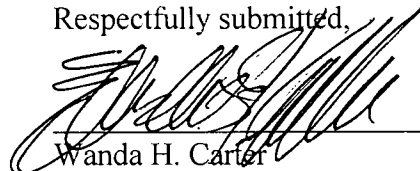
certiorari and accompanying appendix in the case of James Matthews v. State on March 2, 2011. In addition, in February, 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Anne Gordon v. State and Timothy Tyrone Murray v. State. Also in February, 2011, Counsel filed the initial briefs of appellant and designations of matter in the cases of State v. Robert Upchurch, State v. Johnnie Jones, State v. Arnold Ward, State v. George Jones and State v. Jennifer Rayanne Dykes. Counsel filed the petition for rehearing in the case of State v. Leroy A. Brown and the brief of petitioner in the case of Brian Gebhard v. State in February, 2011, as well.

3. This request is made in good faith, and not for purposes of delay.

4. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

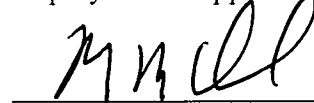
WHEREFORE, the undersigned counsel would respectfully request a **final** thirty-day extension in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



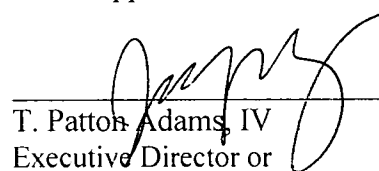
Wanda H. Carter

Deputy Chief Appellate Defender



Robert M. Dudek

Chief Appellate Defender



T. Patton Adams, IV
Executive Director or
J. Hugh Ryan, III
General Counsel

March 21, 2011

I DO NOT OPPOSE:



Brian Petrano

The Supreme Court of South Carolina

Francis O. Campbell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable J. Michelle Childs
Richland County
Trial Court Case No. 2006-CP-40-00402

ORDER

For good cause shown, the request for an extension until March 21, 2011 to serve and file the Petition for Writ of Certiorari and Appendix in this matter is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what measures are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Lorenda J. Shealy*

Clerk

Columbia, South Carolina *Chief Deputy*

February 22, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Brian T. Petrano

ORIGINAL



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 18, 2011

RECEIVED

FEB 18 2011

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

Dear Mr. Shearouse:

In absence of Robert M. Dudek, Chief Appellate Defender, and Patton Adams, Executive Director of the South Carolina Commission on Indigent Defense and Hugh Ryan, Deputy Attorney and General Counsel for the South Carolina Commission on Indigent Defense and pursuant to instructions from Mr. Ryan, I ask that you accept this cover letter as an attempt to comply with the Court's order dated March 18, 2009, in regard to extension requests.

In the attached motion for an extension of time, Deputy Chief Appellate Defender, Wanda H. Carter, seeks a one month extension of time to file the petition for writ of certiorari and accompanying appendix. Based on that and her extremely heavy case load, as outlined in the motion, she was unable to complete the petition for writ of certiorari and accompanying appendix.

Thank you for allowing me to bring this to your attention. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Lisa Campbell
Assistant Director
South Carolina Commission on
Indigent Defense

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

J. Michelle Childs, Circuit Court Judge

RECEIVED

FEB 18 2011

S.C. Supreme Court

FRANCIS O. CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

(3)

The undersigned counsel would respectfully request a thirty day extension in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. Petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by two prior orders of this Court.

2. Counsel will be filing the initial briefs of appellant and designations of matter in the cases of State v. Robert Upchurch and State v. Johnnie Jones today. Counsel filed the petition for rehearing in the case of State v. Leroy A. Brown on February 16, 2011. Additionally, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Arnold Ward on February 14, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. George

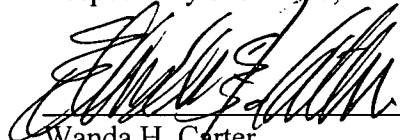
Jones on February 7, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Jennifer Rayanne Dykes on February 4, 2011. Counsel filed the Brief of Petitioner in the case of Brian Gebhard v. State on February 3, 2011. In January 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of Herman Lee Beasley and State v. Larry B. Horton. Also in January 2011, Counsel filed the initial briefs of appellant and designations of matter in the cases of State v. Donald Jones, State v. Abel Jacobs and State v. Andrew Ladron.

3. This request is made in good faith, and not for purposes of delay.

4. As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,

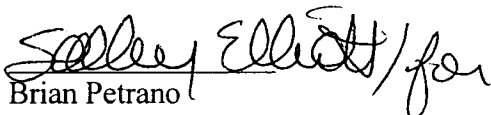


Wanda H. Carter
Deputy Chief Appellate Defender

Robert M. Dudek
Chief Appellate Defender

February 18, 2011

I DO NOT OPPOSE:



Brian Petrano

The Supreme Court of South Carolina

Francis O. Campbell,

Petitioner,

v.

State of South Carolina,

Respondent.

The Honorable J. Michelle Childs
Richland County
Trial Court Case No. 2006-CP-40-00402

ORDER

For good cause shown, the request for an extension until February 18, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY

Drenda J. Shaly

Clerk

Columbia, South Carolina

Chief Deputy

January 19, 2011

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Brian T. Petrano

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

J. Michelle Childs, Circuit Court Judge

RECEIVED

JAN 19 2011

S.C. Supreme Court

FRANCIS O. CAMPBELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**PETITION FOR EXTENSION TO FILE
PETITION FOR WRIT OF CERTIORARI
AND APPENDIX**

(2)

The undersigned counsel would respectfully request a thirty day extension in which to file the petition for writ of certiorari and appendix in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1. Petition for writ of certiorari and appendix in this case are due to be served and filed today, having been extended by one prior order of this Court.

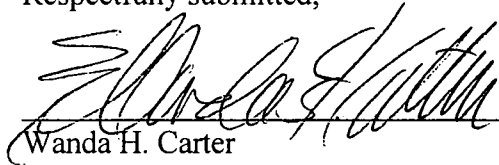
2. Counsel is working on the initial brief of appellant and designation of matter in the case of State v. Jennifer Rayanne Dykes, due on January 21, 2011. On

January 18, 2011, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Donald Jones. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Abel Jacobs on January 14, 2011. Also, on January 6, 2011, Counsel filed the initial brief of appellant and designation of matter in the case of State v. Andrew Ladron. Moreover, in December 2010, counsel filed the initial briefs of appellant and designations of matter in the following cases: State v. Benjamin P. Green, State v. Kevin J. Williams, Sr., State v. Craig Stephens Furcron, State v. Otis Lamar Bland, Jr., State v. Darrell L. Williams, State v. Gerald Carlisle, and State v. Michael Paul Cornelius. Furthermore, in December 2010, counsel filed the petitions for writ of certiorari and appendices in the following cases: Emmett Kelly v. State, Edward Davis v. State, and Bruce lee Hudson v. State.

3. This request is made in good faith, and not for purposes of delay.

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the petition for writ of certiorari and appendix in this case. Counsel requests that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

January 19, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Saluda County
The Honorable Michael G. Nettles., Circuit Court Judge

FRANCIS O. CAMPBELL,

PETITIONER,

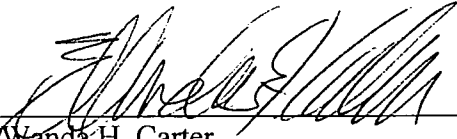
V.

THE STATE,

RESPONDENT

CERTIFICATE OF SERVICE

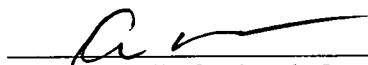
The undersigned attorney hereby certifies the petition in which to file the petition for writ of certiorari and appendix in the above referenced case has been served upon Brian Petrano, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 19th day of January, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of January, 2011.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

The Supreme Court of South Carolina

Francis O. Campbell, Petitioner,

v.

State of South Carolina, Respondent.

The Honorable J. Michelle Childs
Richland County
Trial Court Case No. 2006-CP-40-00402

ORDER

The request for an extension until January 19, 2011 to serve and file the Petition for Writ of Certiorari and Appendix is granted. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


Clerk

Columbia, South Carolina

December 21, 2010

cc: Deputy Chief Appellate Defender Wanda H. Carter
Assistant Attorney General Brian T. Petrano

ORIGINAL



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

December 20, 2010

RECEIVED

DEC 20 2010

S.C. Supreme Court

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Francis O. Campbell v. State of South Carolina

Dear Mr. Shearouse:

The petition for writ of certiorari and appendix in the above-referenced case are due to be served and filed today. Because of my present workload, I respectfully request a thirty-day extension of this deadline. No prior extensions have been requested in this case.

By copy of this letter, I am informing Brian Petrano, Esquire, of the Office of the Attorney General, of this extension request.

Thanking you for your cooperation and assistance in this matter.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/kam

cc: Brian Petrano



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

October 19, 2010

RECEIVED

OCT 19 2010

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Francis O. Campbell v. State of South Carolina

10/19/2010

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Lorie French
Legal Services Coordinator



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

September 16, 2010

Ms. Cheri L. Young
Circuit Court Reporter
P O Box 1154
Aiken, SC 29802

Dear Ms. Young:

RECEIVED
SEP 16 2010
S.C. SUPREME COURT

Our office has been requested to perfect the appeal arising out of:

Francis O. Campbell v. State of South Carolina Case #: 06-CP-40-00402.

County: Richland Date of Trial: April 12, 2010

Presiding Judge: Michelle J. Childs

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

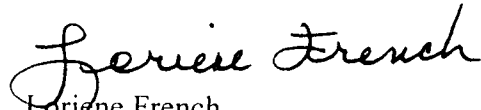
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Cheri L. Young
September 16, 2010
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Loriane French". The signature is written in black ink and is positioned above the printed name and title.

Loriane French
Legal Services Coordinator

cc: S.C Supreme Court
Attorney General's Office

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

RECEIVED

August 27, 2010
VIA HAND DELIVERY

AUG 27 2010

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Francis Owens Campbell v. State, Docket No.: 2006-CP-40-0402

Dear Sir:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the Respondent.
- (2) A copy of the Order granting PCR Relief and the subsequent Order issued by the Honorable J. Michelle Childs denying PCR Relief.
- (3) This appeal is being filed with the Supreme Court pursuant to Rule 243 (b), SCACR.

By copy of this letter, I am sending a copy of these documents to the Office of Appellate Defense since I was appointed to represent Francis Owens Campbell.

Thank you for your assistance with this matter. Please contact my office with any questions.

Yours truly,
A handwritten signature in black ink, appearing to read "Tricia A. Blanchette".
Tricia A. Blanchette
Attorney at Law

cc: Brian T. Petrano, Assistant Attorney General
Office of Appellate Defense
Francis Owens Campbell

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable J. Michelle Childs, Circuit Court Judge

RECEIVED

AUG 27 2010

S.C. SUPREME COURT

Case No.: 2006-CP-40-0402

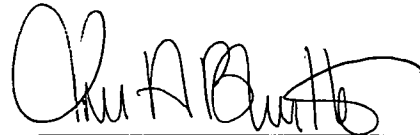
Francis Owens Campbell,.....Petitioner,

vs.

State of South Carolina,.....Respondent.

NOTICE OF APPEAL

Francis Owens Campbell, Petitioner, appeals the Order issued by the Honorable J. Michelle Childs on June 17, 2010, which was filed on June 23, 2010, in conjunction with the Order issued by the Honorable J. Michelle Childs on August 19, 2010, which was filed on August 20, 2010. The Petitioner, through counsel, received notice of the entry of the final Order on August 25, 2010.



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Appointed PCR Counsel

Other Counsel of Record:

Brian T. Petrano
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable J. Michelle Childs, Circuit Court Judge

Case No.: 2006-CP-40-0402

RECEIVED

AUG 27 2010

S.C. SUPREME COURT

Francis Owens Campbell,.....Petitioner,

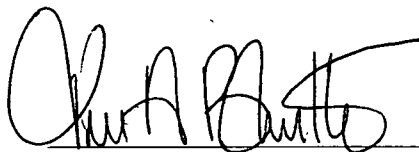
vs.

State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, PCR counsel, hereby certify that I hand delivered this 27th day of August 2010, a copy of the Notice of Appeal and two Orders issued by the Honorable J. Michelle Childs to Brian T. Petrano of the Attorney General's Office, at:

Office of the Attorney General
ATT: Brian T. Petrano, Esq.
1000 Assembly Street, Room 519
Columbia, SC 29201



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Appointed PCR Counsel

August 27, 2010

RECEIVED

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE 27 2010

COUNTY OF RICHLAND

CASE NO: 2006CP4000402 S.C. SUPREME COURT

IN THE COURT OF COMMON PLEAS

Francis Owen #111197 Campbell

vs.

State of South Carolina

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 23rd day of August, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Tommy A Thomas Kathrine Haggard Hudgins
 Ian Christopher Deysach Susan Barber Hackett
 Charles T Brooks III Tricia A Blanchette

Robert L Brown

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Francis O. Campbell,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2006-CP-40-0402

ORDER

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 AUG 20 AM 10:05

RICHLAND COUNTY
FILED

This matter came before the Court pursuant to Respondent's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCP. Brian T. Petrano, Esquire, Assistant Attorney General, represents Respondent, the State of South Carolina; and Tricia A. Blanchette, Esquire, represents Petitioner, Francis Owen Campbell.

FACTUAL AND PROCEDURAL BACKGROUND

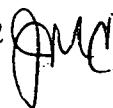
Applicant is presently incarcerated in the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Clerk of Court for Richland County. He was indicted for murder during the March 1982 term of the Court of General Sessions for Richland County. At the time of his indictment, Venable Vermont, Jr., Esquire, ("Vermont") represented Applicant. On April 26, 1982, Applicant proceeded to trial and the jury found him guilty of murder. The Honorable William Howard Ballenger sentenced Applicant to confinement for a period of life in the South Carolina Department of Corrections for a period of life.

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Attorney Vermont filed a timely Notice of Appeal on Applicant's behalf and an appeal was perfected. The South Carolina Supreme Court affirmed Applicant's conviction and sentence. See State v. Campbell, Op. No. 1983-MO-283 (filed November 8, 1983).

Applicant subsequently filed an Application for Post-Conviction Relief ("PCR") on November 20, 1985. The State filed its Return on February 24, 1986. Michael J. Thompson, Esquire, represented Applicant at evidentiary hearings on February 25, 1987 and July 27, 1987, during which Applicant proceeded on the following allegations:

- 1) He was denied effective assistance of trial counsel, in that his counsel:
 - a. Failed to properly investigate the case to uncover certain evidence.
 - b. Failed to present certain available witnesses, namely, Thomas Campbell.
 - c. Failed to properly investigate and present evidence regarding the financial interests (i.e., motive) of others to commit the crime.
 - d. Failed to properly investigate and present evidence regarding the background of certain of the State's witnesses and to discredit them.
- 2) The following new and after-discovered evidence existed which was material and likely to change the outcome of another trial, if granted:
 - a. Evidence in the form of hypnosis, polygraph, and chemical tests of Applicant, which establish that he was not the assailant.
 - b. Statement of witnesses to the effect that the deceased's wife, Ann Wilson, was involved in the theft of guns from the residence of Applicant's sister prior to the murder of the deceased.

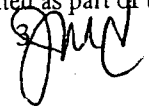
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- c. Another person has confessed to the murder of the deceased.

By Order dated October 10, 1987, The Honorable Owens T. Cobb, Jr., Circuit Court Judge, denied and dismissed Applicant's Application. Applicant subsequently filed a notice of appeal which was denied.

On April 12, 2010, the matter came before the Court for an evidentiary hearing. Present at the hearing were Applicant, represented by Tricia A. Blanchette, Esquire; and Assistant Attorney General Brian T. Petrano, Esquire, representing the State of South Carolina. During the course of the hearing, Applicant, Ulysses Fleming, John Jeffery McDonald, and Ronnie Wilson testified. Applicant also admitted one exhibit into evidence. The State did not call any witnesses to testify at the hearing.¹ The Court had before it (1) records of the Richland County Clerk of Court regarding the subject convictions; (2) Applicant's records from the SCDC; (3) the trial transcript; (4) the prior PCR Appendix from the Supreme Court of South Carolina; (5) the Statement of Johnny Allen Bradwell dated August 7, 1980; (6) the current Application; (7) the State's Return and Motion for More Definite Statement; (8) the Order to Relieve Counsel, Appoint New Counsel, Appoint an Investigator, and for Disclosure of Discovery; and (9) the exhibit introduced by Applicant at the evidentiary hearing. By Order filed June 23, 2010, the Court made the following findings: (1) that Applicant had met his burden of proof as to his allegations of newly discovered evidence; (2) that the PCR Application was granted; (3) that Applicant's conviction was vacated and a new trial granted; and (3) that Applicant should be

¹ As a threshold matter, the Court states now that it erred in stating the following in its previous Order: "It must also be noted that the Respondent did not submit any evidence or call any witnesses to refute the testimony of the Applicant or his witnesses." Respondent did submit evidence in the form of the Appendix from Applicant's prior PCR appeal, which was copied on microfilm and submitted as part of the record.



released from the custody of the South Carolina Department of Corrections and transferred to the custody of Richland County pending the disposition of his case. The Court based its decision on various factors, including findings that: Applicant had met the threshold requirements for newly discovered evidence enumerated in State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999) and Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983), finding that in the totality of the testimony and evidence before the Court, Applicant had met these tests; a potential Brady claim had occurred in that the State had not relinquished possible exculpatory evidence to Applicant prior to his trial; and because to deny Applicant a new trial would constitute a denial of fundamental fairness shocking to the judicial sense of justice.

By motion filed on July 7, 2010, the State requested the Court to alter or amend its Order stating that the Court erred in finding that Applicant is entitled to relief based on newly discovered evidence, a potential Brady claim, and a denial of fundamental fairness shocking to the judicial sense of justice. Specifically, Respondent contends that (1) the testimony of Jeffrey McDonald is not newly discovered evidence; (2) the Court's previous Order overlooked that Applicant's claims are successive; (3) the Court, in its Order, alluded to the cumulative error doctrine, but that doctrine is not recognized under South Carolina law; (4) Applicant's contention that he received ineffective assistance of counsel on his prior PCR application is not a ground for relief; (5) the Court erred in stating that there was "no evidence" to "support the murder conviction;" (6) the Court erred in finding that Applicant's testimony at the April 2010 PCR hearing was credible, as the jury had already decided that Applicant's testimony was not credible.



LEGAL STANDARD

Pursuant to Rule 59(e), SCRCP, "a motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." "The purpose of Rule 59(e) is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). A motion to alter or amend is not an opportunity for a party to reargue its case. See Collins Music Co., Inc. v. IGT, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002). Additionally, a party cannot raise an issue for the first time in a Rule 59(e), SCRCP, motion that could have been raised previously. Mailsources, LLC v. M.A. Bailey & Associates, Inc., 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

LAW / ANALYSIS

This Court has had the opportunity to review the entire record, including Respondent's arguments in its Motion to Reconsider, has heard the testimony and arguments presented at the hearing and has had the opportunity to observe each witness and pass upon his or her credibility and has weighed the testimony accordingly, and now makes the following amended findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

1. In a PCR Action, the "burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). The Uniform Post Conviction Procedure Act provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other



proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (2003).

2. Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in the previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

3. Applicant's new Application is primarily based on his contention that there is newly discovered evidence in his case that would demonstrate his innocence of the murder charge for which he is incarcerated. Here, Applicant has presented separate pieces of alleged newly discovered evidence. After his own testimony, Applicant presented the testimony of Ulysses Fleming ("Fleming") regarding the dismissal of charges against Tommy Campbell and his boasting about putting his own brother behind bars. Secondly, Applicant presented the testimony of Jeffrey McDonald ("McDonald") that corroborated the Johnny Bradwell statement and also claimed that he provided exculpatory information to law enforcement that was not made known to Applicant. Finally, Applicant presented the testimony of Tally and Ronnie Wilson regarding the admission made by Johnny Bradwell and by Richard Blizzard regarding the guilt of Dinky Taylor.

4. To prevail in a PCR based on a claim of newly discovered evidence, Applicant must establish that the newly-discovered evidence: "(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the

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exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching.” State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993)); see also Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983).

Ulysses Fleming

5. In December 2008, Ulysses Fleming (“Fleming”) stated that it was his understanding that Tommy Campbell regularly testified for the State to get a deal or to work off his own charges. Fleming, who was retired from the Department of Natural Resources, testified that he recalled pursuing charges against Tommy Campbell in the mid-1980s for night hunting but that the Richland County Solicitor’s Office instructed him to drop the charges because Tommy Campbell was planning to testify for the State regarding a murder that occurred on Two Notch Road in Columbia. Fleming also testified that he specifically recalled Tommy Campbell bragging to him that he helped put Applicant, his brother, behind bars. Fleming explained that he also tried to pursue a gun charge against Tommy Campbell but that he could not persuade Richland County or the Bureau of Alcohol, Tobacco, Firearms and Explosives to further investigate the case.

6. Regarding the testimony of Fleming, this Court finds no reference to Fleming in the record of the prior proceedings nor does it appear from his testimony that he had any form of communication with anyone involved in Applicant’s case prior to the present PCR action. Therefore, this Court finds that the testimony of Fleming is newly discovered under Spann.

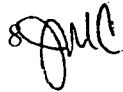
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7. While the record shows that Tommy Campbell assisted the police in their investigation of this murder, Tommy Campbell was not called to testify at trial. Therefore, Applicant's claim that Tommy Campbell was an unreliable witness is irrelevant and immaterial. Moreover, it would not impact a new trial or serve to be more than cumulative or impeaching. Accordingly, the Court finds that Fleming's testimony does not satisfy the Spann standard.

Jeffrey McDonald

8. Respondent contends that the Court should reconsider its previous Order because the testimony of John Jeffery McDonald ("McDonald") is not newly discovered evidence. Respondent contends that the case investigator testified that he interviewed McDonald at Applicant's prior PCR hearing in 1987, at which time Respondent contends that Applicant could have called McDonald as a witness during that hearing. Respondent also argues that Applicant obtained the Johnny Bradwell statement in the early 1980s, and that the parties explicitly referenced the statement during the pretrial conference. (Pretrial Tr., 6). The statement reveals the full name "Jeff McDonald," and not just the first name "Jeff." Further, Respondent provided the Court with a copy of such affidavit containing the full name "Jeff McDonald" for the Court's consideration in its motion to reconsider.

9. At the December 2008 PCR hearing, Jeffrey McDonald ("McDonald") testified that Dinky Taylor privately admitted to him that he murdered Owin Wilson. McDonald testified that he could not remember the specific date but that he remembered being in the car with Dinky Taylor when he stated that there was something he wanted to "get off his chest." McDonald



testified that Dinky Taylor then told him that he had killed Owin Wilson and that his girlfriend, Pam, had driven him on the night of the murder.

10. McDonald further testified that he provided Lt. Lewis with a written and recorded statement recounting Dinky Taylor's admission. McDonald stated that he was not contacted by law enforcement or the State prior to trial and that Applicant's investigator in the current PCR action was the first person he had spoken with since Lewis regarding the matter.

11. McDonald testified that he provided exculpatory evidence to Lt. Lewis, and Applicant testified that he was never informed that this evidence existed.

12. To find that Applicant has satisfied the test for newly discovered evidence, this Court must first determine if the evidence has "been discovered since trial and could not in the exercise of due diligence been discovered prior to trial." Spann at 619, 513 S.E.2d at 99. At the prior PCR, Lieutenant Lewis testified only that he was unable to confirm the information contained in the Johnny Bradwell statement. (PCR Tr., 96). He also testified that if he had been able to confirm the Johnny Bradwell affidavit with "some hard evidence," then Dinky Taylor would be in jail. (PCR Tr., 102).

13. However, McDonald testified that he provided Lt. Lewis with a statement regarding another Dinky Taylor confession separate from the alleged confession contained in the Johnny Bradwell statement. Lt. Lewis made no mention of the existence or nonexistence of another statement regarding Dinky Taylor's guilt. Applicant's trial attorney mentioned the Johnny Bradwell statement but never a separate statement by McDonald during the prior PCR

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hearing. Furthermore, McDonald testified that, until now, he had never been contacted regarding the matter since his initial contact with Lieutenant Lewis.

14. Applicant obtained the Johnny Bradwell affidavit in the early 1980s. The affidavit contained McDonald's full name and was specifically mentioned at the pretrial conference. (Pretrial Tr., 6). Thus, McDonald's testimony corroborating Johnny Bradwell's statement regarding a confrontation between McDonald and Dinky Taylor is not newly discovered evidence as it could have been discovered prior to trial in the exercise of due diligence.

15. Based on the above information provided to the Court, it is clear that Applicant knew the name of Jeffrey McDonald, Lt. Lewis interviewed him, and, for whatever reason, Applicant did not call him to testify at the trial or at the previous PCR. Therefore, whatever information that has come to light based on McDonald's testimony during the present PCR could have been discovered by the exercise of due diligence previously. Therefore, because McDonald was never called to testify at trial or the prior PCR, Applicant cannot satisfy the Spann factors.

16. The Court noted previously that if McDonald made a statement that was not relinquished to Applicant, then a potential Brady violation could have occurred. It is well established that the prosecution has a duty to disclose all favorable evidence to a criminal defendant, and Applicant has testified that this evidence was never provided to him. See Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963); Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555 (1995); Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). Lieutenant Lewis testified in Applicant's previous PCR that he spoke to each individual referenced in Johnny Bradwell's

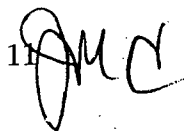
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statement, including McDonald, but was unable to confirm any of the information contained in the statement. Again, Applicant had merely to call McDonald to testify to the existence of the statement, but Applicant never called McDonald previously, for whatever reason, and so the existence or non-existence of an alleged statement given to Lt. Lewis could have been taken up previously by the Court and was not. Therefore, the Court now finds that any potential Brady violation has now lapsed due to Applicant's failure to bring forth McDonald as a witness.

17. Furthermore, under S.C. Code Ann. § 17-27-45(c), any purported newly discovered evidence must be presented within one year of when it was discovered. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Respondent contends that Applicant's claim of newly discovered evidence is not timely because Applicant could have called McDonald to testify at any time at or immediately following the first PCR hearing, the case investigator could have been questioned, the alleged written statement of McDonald could have been discovered, and the claim of newly discovered evidence with respect to McDonald lapsed in 1997. The Court agrees and finds that Applicant's claim of newly discovered evidence with respect to McDonald has lapsed.

Richard Blizzard

18. Tally and Ronnie Wilson both testified that they received information regarding Applicant's innocence from Richard Blizzard at a family reunion in April 2008, which represents the original basis for Applicant's claim of newly discovered evidence. Upon review of the available records in this case, the Court finds no prior reference to Richard Blizzard or his admission that he was present when the murder occurred and saw Dinky Taylor "blow[] [the

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victim's] head off." Thus, the information has been discovered since the trial and the previous PCR and could not have been discovered prior to trial in the exercise of due diligence as Richard Blizzard's name has never before been mentioned in the record. An eyewitness testimony is obviously material and not merely cumulative or impeaching. Further, an eyewitness account that identifies someone other than Applicant as the murderer is clearly the type of testimony that would likely change the result if a new trial were granted. Accordingly, the Court finds that Richard Blizzard's eyewitness account of the murder satisfies the Spann standard.

19. However, Applicant again has the same problem that arose in his previous PCR in that he did not call Richard Blizzard to testify at his PCR, and has not provided a valid reason for this failure. Therefore, the Court now finds that while this evidence is newly discovered under Spann, it has no manner in which to judge the eye witness' credibility and Applicant has given no reason for his failure to appear at the PCR hearing.

Ronnie Wilson

20. In December 2008, Ronnie Wilson testified that he received a telephone call from Johnny Bradwell in 2004, during which Johnny Bradwell informed him that Dinky Taylor killed Owin Wilson and that Dinky Taylor's girlfriend, Pam, was present at the scene. Ronnie Wilson also testified that Johnny Bradwell was impossible to locate, so he could not follow up with him regarding that phone call. Ronnie Wilson testified that he had never told anyone about the phone call with Johnny Bradwell.

21. At the prior PCR, information surfaced that Johnny Bradwell robbed the residence of Delores Mock, Applicant's sister, on behalf Ann Wilson. Delores Mock asserted her Fifth

Amendment rights regarding a number of questions at Applicant's trial. She also testified at Applicant's prior PCR evidentiary hearing that she had received threats and was scared for her life. Therefore, any information Johnny Bradwell possessed regarding the robbery of Delores Mock and its effect on her testimony was deemed relevant and pertinent.

22. Accordingly, attempts were made to compel Johnny Bradwell's attendance at the prior PCR hearings. The record reflects that Johnny Bradwell indicated that he would disobey a subpoena, would not give an address, and instructed the Court that he would be hard to locate. The Court issued a bench warrant for Johnny Bradwell. The prior PCR record does not reflect any testimony from Bradwell, and Applicant testified that, to his knowledge, Bradwell was never brought to court or arrested.

23. Johnny Bradwell made a statement to the police regarding Dinky Taylor's guilt on August 7, 1980. Applicant obtained the Johnny Bradwell affidavit in the early 1980s, and the statement was specifically mentioned at the pretrial conference. (Pretrial Tr., 6). Attorney Vermont testified at Applicant's prior PCR that, on the face, Johnny Bradwell's statement appeared to be a fairly important piece of exculpatory evidence and that he was especially interested in seeking out the individuals named but that he was ultimately unsuccessful in pursuing the allegations contained therein. (PCR Tr., 824-825).

24. Johnny Bradwell's statement was known to Applicant in the early 1980s, and Applicant's trial counsel investigated the statement with due diligence. Thus, any information Johnny Bradwell may possess regarding his 1980 statement cannot be considered newly discovered evidence and therefore does not satisfy the Spann standard.

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25. Furthermore, Applicant has provided no information regarding his failure to call Johnny Bradwell at the present PCR hearing; and therefore, the Court has no way of making any determination as to his credibility.

Overruling Prior PCR Court/ Successiveness

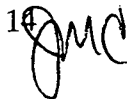
26. Respondent contends that this Court effectively overruled another circuit court judge by finding Applicant's testimony at this PCR hearing more credible than that of the case investigator's testimony at the PCR hearing in 1987.² Respondent supports its contention that by highlighting that the previous PCR judge's order indicated that the case investigator was credible because there was nothing to "confirm" the Bradwell affidavits. (Prior PCR Appeal, p. 195, 857), Respondent argues that the case investigator and McDonald cannot both be credible.

27. However, the Court's finding of credibility with respect to the testimony regarding alleged newly discovered evidence in this case did not conflict with prior findings that various witnesses lacked credibility in the prior PCR; and therefore, this Court did not overrule another circuit court judge's decision.

Cumulative Errors

28. The Court's previous Order states the following: "[t]his Court finds that standing alone these three pieces of evidence may not be material or outcome determinative, but taken as a whole the evidence clearly satisfies the Spann standard." Respondent contends that cumulative error is not a recognized ground for relief. The Court essentially agrees with Respondent to the extent that the cumulative error doctrine remains an unsettled question in our State's jurisprudence. See Simpson v. Moore, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006) (citing

² The case investigator has since died and is therefore not available to rebut Applicant's testimony.

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Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 325 (2002) and stating “[w]hether several errors, which are independently found not be prejudicial, may cumulatively warrant relief is an unsettled question in South Carolina”). Therefore, the Court amends its prior order to the extent that it alludes to the cumulative error doctrine and instead recognizes that each of the pieces of evidence found to satisfy the Spann factors is sufficient to warrant a new trial. Regardless, the Court now finds that all evidence proffered in the present PCR does not warrant a new trial in these circumstances.

Ineffective Assistance of Prior PCR Counsel

29. Respondent contends that Applicant suggests that the arguments of newly discovered evidence should have been raised by his previous counsel at the prior PCR hearing, and that Applicant’s contention that he received ineffective assistance of counsel at his prior PCR is not a ground for relief. However, Applicant did not make that argument, nor did the Court’s Order base its decision to grant the application on such arguments.

Sufficient Evidence to Present the Case to a Jury

30. Respondent argues that the Court erred in stating that there was no evidence to “support the murder conviction that has placed Applicant in prison for life.” (Order, 16). The Court agrees that this statement was error and finds that to the extent that its previous Order may be construed to substitute its own judgment for that of the jury was not the intent of the Court in making its findings in the previous Order.

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F. Applicant's Testimony at Trial

31. Finally, Respondent argues that Applicant raised the "Dinky did it" theory at his trial and the jury rejected the argument; and therefore, the Court erred in granting Applicant's PCR. However, the Court's findings were based on the alleged newly discovered evidence in this case, and the Court's amended findings are also based on new information in this case, and therefore, despite the similarities of the claims in the present and past PCR, this PCR was based on new allegations.

32. As it did previously, the Court notes the unique nature of this case in the immense support Applicant has received from the victim's family. It is clear that the victim's family has assisted Applicant in trying to prove his innocence from the very beginning of this case. However, upon the Court's additional and thorough review of the record before it, it now finds that Applicant is unable to overcome the procedural quandary in which he now finds himself. Applicant has simply failed to provide the Court with any valid reason why various witnesses were not called at his trial, previous PCR or during his present PCR hearing.

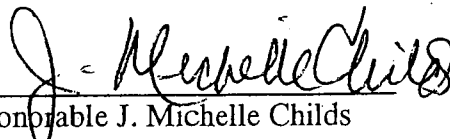
CONCLUSION

Based on the foregoing, **NOW THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED** that Respondent's Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRP is **GRANTED**. However, the Court now finds and orders the following:

1. That the Application for Post-Conviction Relief be denied;
2. That Applicant's conviction shall remain intact and no new trial had;
3. That Applicant shall remain in the custody of South Carolina Department of Corrections.



AND IT IS SO ORDERED.



The Honorable J. Michelle Childs
Presiding Judge
Fifth Judicial Circuit

This 19th day of August, 2010.
Columbia, South Carolina.

RECEIVED

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE AUG 27 2010

CASE NO: 2006CP4000402

S.C. SUPREME COURT

Francis Owen #111197 Campbell

vs.

State of South Carolina

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC; ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGE

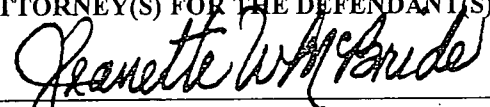
This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 24th day of June, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Tommy A Thomas
 Kathrine Haggard Hudgins
 Ian Christopher Deysach
 Susan Barber Hackett
 Charles T Brooks III
 Tricia A Blanchette

Robert L Brown

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Francis O. Campbell,)

Civil Action No.: 2006-CP-40-0402

Applicant,)

v.)

ORDER

State of South Carolina,)

Respondent.)

JEANETTE W. McBRIDE
C.C.P. & C.S.

2010 JUN 23 AM 9:01

RICHLAND COUNTY
FILED

PROCEDURAL HISTORY

This matter comes before the Court pursuant to an Application for Post-Conviction Relief ("PCR") filed on January 18, 2006. The State submitted a Return and Motion for More Definite Statement on January 29, 2006. A hearing on the Motion for More Definite Statement was held before the Circuit Court on December 17, 2008. At that hearing, the State moved to dismiss the application. Defense counsel moved to be relieved and for the Court to appoint new counsel and an investigator. By Order dated January 31, 2009, the Court ordered counsel to be relieved and new counsel appointed. The Court also appointed an investigator.

On April 12, 2010, the matter came before the Court for an evidentiary hearing. Present at the hearing were Applicant, represented by Tricia A. Blanchette, Esquire; and Assistant Attorney General Brian T. Petrano, Esquire, representing the State of South Carolina. During the course of the hearing, Applicant testified, along with Ulysses Fleming, John Jeffery McDonald, and Ronnie Wilson. Applicant also admitted one exhibit. The State did not call any witnesses to testify at the hearing.

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Applicant is presently incarcerated in the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted for murder during the March 1982 term of the Court of General Sessions for Richland County. At the time of his indictment, Venable Vermont, Jr., Esquire represented Applicant. On April 26, 1982, Applicant proceeded to trial and the jury found him guilty of murder. The Honorable William Howard Ballenger sentenced Applicant to confinement for a period of life.

Attorney Vermont filed a timely Notice of Appeal on Applicant's behalf and an appeal was perfected. The South Carolina Supreme Court affirmed Applicant's conviction and sentence. See State v. Campbell, Op. No. 1983-MO-283 (filed November 8, 1983).

Applicant subsequently filed an application for PCR on November 20, 1985. The State filed its Return on February 24, 1986. Evidentiary hearings were convened (on February 25, 1987 and July 27, 1987), during which Michael J. Thompson, Esquire, represented Applicant. At the evidentiary hearings, Applicant proceeded on the following allegations:

- 1) He was denied effective assistance of trial counsel, in that his counsel:
 - a. Failed to properly investigate the case to uncover certain evidence.
 - b. Failed to present certain available witnesses, namely, Thomas Campbell.
 - c. Failed to properly investigate and present evidence regarding the financial interests (i.e., motive) of others to commit the crime.
 - d. Failed to properly investigate and present evidence regarding the background of certain of the State's witnesses and to discredit them.

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- 2) The following new and after-discovered evidence exists which is material and likely to change the outcome of another trial, if granted:
- a. Evidence in the form of hypnosis, polygraph, and chemical tests of Applicant, which establish that he was not the assailant.
 - b. Statement of witnesses to the effect that the deceased's wife, Ann Wilson, was involved in the theft of guns from the residence of Applicant's sister prior to the murder of the deceased.
 - c. Another person has confessed to the murder of the deceased.

By Order dated October 10, 1987, The Honorable Owens T. Cobb, Jr., Circuit Court Judge, denied and dismissed Applicant's application. Applicant subsequently filed a notice of appeal which was denied.

The Court now has before it (1) records of the Richland County Clerk of Court regarding the subject convictions; (2) Applicant's records from the SCDC; (3) the trial transcript; (4) the prior PCR Appendix from the Supreme Court of South Carolina; (5) the Statement of Johnny Allen Bradwell dated August 7, 1980; (6) the current Application; (7) the State's Return and Motion for More Definite Statement; (8) the Order to Relieve Counsel, Appoint New Counsel, Appoint an Investigator, and for Disclosure of Discovery; and (9) the exhibit introduced by Applicant at the evidentiary hearing.

LEGAL DISCUSSION

In a PCR Action, the "burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). The Uniform Post Conviction Procedure Act provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (2003). Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in the previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant now alleges that his new application is based on after-discovered evidence. To prevail on this claim, Applicant must establish that the after-discovered evidence: "(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching." State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993)); see also Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983).

**SUMMARY OF THE TESTIMONY AND EVIDENCE
PRESENTED AT THE EVIDENTIARY HEARING**

At the beginning of the evidentiary hearing, the State provided this Court with the procedural history and renewed its motion for dismissal. In response, Applicant's counsel provided the Court with an explanation of the events that had transpired since the issuance of the Order in January 2009, which granted Applicant's request for an

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investigator and invocation of the discovery process. Applicant's counsel explained to the Court that Brian T. Petrano, Assistant Attorney General, located a box of case documents at the Attorney General's Office, which were reviewed in February 2009. Defense counsel also explained that both parties had made attempts to obtain a copy of Applicant's file from the Richland County Sheriff's Department. However, both have been informed that a fire destroyed the file. Furthermore, Applicant's counsel explained that both parties made several phone calls and attempts in person to locate Applicant's files at the Richland County Clerk of Court's Office, but no files could be found. Applicant's counsel informed this Court that it was her understanding that the Assistant Attorney General located Applicant's Appendix at the South Carolina Supreme Court on or about March 15, 2010. Applicant's counsel stated that she received a copy of the pertinent portions of the Appendix late in the afternoon on March 30, 2010, read the transcripts and case documents, and met with Applicant on April 1, 2010 to discuss the contents of the recently discovered documents.

As a result of those documents, Applicant's counsel conceded that a number of issues that Applicant had planned to present to the Court had been previously raised, but counsel explained that Applicant had several witnesses that were prepared to testify regarding his allegation of newly discovered evidence. Applicant's counsel also urged this Court to consider the testimony of newly discovered evidence in the context of the prior proceedings and with the knowledge that Applicant and the victim's family had been consistently arguing that Applicant was innocent of the charges against him. After explaining Applicant's position in light of the recently discovered Appendix, counsel called Applicant as a witness.

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A. Testimony of Francis Owens Campbell

During his testimony, Applicant acknowledged that he filed the present Application alleging newly discovered evidence. He further explained that his allegations fell under two broad issues: (1) unreliable testimony was the basis for his arrest and indictment; and (2) the victim's wife, Ann Wilson, and her brother, Dinky Taylor, were involved in the victim's murder and this information was known to law enforcement and not fully disclosed to Applicant.

To put his claims into context, counsel asked Applicant to explain the major events that had transpired in his case. To begin, Applicant recalled that he had been falsely accused of a bank robbery by his brother, Tommy Campbell, and cousin, Jamie Owens. After he was cleared of this charge, Tommy Campbell and Jamie Owens provided statements to law enforcement, which implicated Applicant in the murder of Olin Wilson. Applicant recalled that Jamie Owens testified at his trial, but the State chose not to call Tommy Campbell.

Applicant explained that it was his understanding that Ann Wilson, the victim's widow, was and remained a suspect in the case. Specifically, Applicant directed the Court's attention to the testimony of Lieutenant Connie Lewis ("Lt. Lewis"), who served as the lead investigator in the murder case, at his prior evidentiary hearing. He noted that Lt. Lewis testified that Ann Wilson was never ruled out as suspect, and that he had not been satisfied with the outcome in Applicant's case. (PCR, 101, 105).

Applicant also testified at length about the support he had received from the victim's family. Applicant explained that the victim's family had declared his innocence since the beginning of the case and believed that he did not murder Olin Wilson.

Francis Owens Campbell

Regarding the victim's family, Applicant noted that Tally, Walter and Ronnie Wilson testified at his prior evidentiary hearing. Applicant explained that Walter Wilson was deceased, that Tally Wilson testified at the hearing held in December 2008 and was present in the courtroom, and Ronnie Wilson would be called as a witness.

Turning to the testimony of Walter Wilson, Applicant recalled that Walter Wilson testified that he brought Johnny Bradwell to Lt. Lewis prior to Applicant's trial to give a statement implicating Dinky Taylor in Olin Wilson's murder. Applicant explained that he did not remember the statement being introduced at his prior PCR, ^{hearing} but he conceded that the record reflected that it was introduced during the testimony of Lt. Lewis. (PCR, 94). Applicant was provided a copy of ~~the~~ Johnny Bradwell's statement, and he explained that it clearly stated that Dinky Taylor had admitted murdering Olin Wilson and he had confronted "Jeff" about telling people about his admission. He also explained that prior to the investigation conducted on this PCR, he neither knew the identity of "Jeff," nor was he ever given any information regarding this person. Applicant also noted that Lt. Lewis stated at his prior evidentiary hearing that he could not find any evidence to support Johnny Bradwell's statement; otherwise, Dinky Taylor would be in jail. (PCR, 102).

Turning to the prior evidentiary hearing, Applicant explained that Walter and Ronnie Wilson testified that they had knowledge that Johnny Bradwell robbed the trailer of Delores Mock, Applicant's sister, for Ann Wilson. Both witnesses also testified that they would sign an Affidavit regarding the robbery. Applicant explained that this information was significant because Delores Mock asserted her Fifth Amendment rights regarding a number of questions at Applicant's trial and testified at Applicant's prior

evidentiary hearing that she had received threats and was scared for her life. Applicant also pointed out the admission of Ann Wilson at Applicant's prior evidentiary hearing that Johnny Bradwell was shot in Wilson's home. (PCR, 44).

Applicant was adamant that he desired that Johnny Bradwell be called as a witness at his prior evidentiary hearing, and he recalled that PCR counsel requested time to locate Johnny Bradwell. Relying on the transcript, Applicant acknowledged that the PCR court indicated that Johnny Bradwell should be arrested for robbery, and PCR counsel made a motion for a bench warrant, which was granted. (PCR, 110, 117-8). Applicant explained that, to his knowledge, Johnny Bradwell was never brought to court or arrested.

Applicant further explained that Tally Wilson's testimony at his December 2008 evidentiary hearing addressed the original basis for his claim of newly discovered evidence. Applicant recalled that Tally Wilson testified at trial about seeing Ann Wilson calmly reviewing his brother's insurance policies shortly after his death. (Trial Transcript, 380). Applicant recalled that Tally Wilson testified at his prior evidentiary hearing. Referencing the transcript, he pointed to Tally's testimony that the victim fought with Ann Wilson's brother at a party on July 4, a few days prior to his murder. (PCR, 6-7). He further testified that Ann Wilson stated to him: "I didn't know it was going to be like that." (PCR, 14, 27).

Regarding the December 2008 hearing, Applicant acknowledged that Tally Wilson testified that he was approached by Richard Blizzard at a family reunion in April 2008. (Hearing, 29). He recalled that Tally Wilson further testified that Richard Blizzard

admitted to being present at his brother's murder and he saw Dinky Taylor "blowed his head off." (Hearing, 30).

At the close of his testimony, Applicant pleaded with the Court that he was innocent of the crime in question, and he explained that he had pursued every available avenue to prove his innocence. He explained that he wanted to testify at his prior PCR, but it was his understanding that he would testify when the hearing was reconvened to receive the testimony of Johnny Bradwell. He also explained that he was requesting a new trial due to the evidence that had been discovered, which was material to the issues previously raised at his trial and prior PCR.

B. Testimony of Ulysses Fleming

When called to the stand by Applicant's Counsel, Ulysses Fleming ("Fleming") testified that he was a resident of Richland County and had retired from the Department of Natural Resources. He recalled pursuing charges against Tommy Campbell in the mid-1980s for night hunting. He further recalled that the Richland County Solicitor's Office instructed him to drop the charges because Tommy Campbell was testifying for the State regarding a murder that occurred on Two Notch Road in Columbia. Fleming indicated that it was his understanding that Tommy Campbell regularly testified for the State to get a deal or to work off his own charges. He specifically recalled Tommy Campbell bragging to him that he helped put Applicant, his brother, behind bars. On cross-examination, Fleming explained that Tommy Campbell was a felon, so he also tried to pursue a gun charge against him. On redirect, Fleming explained that he could not persuade Richland County or the Bureau of Alcohol, Tobacco, Firearms and Explosives to further investigate the case.

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C. Testimony of John Jeffery McDonald

After Applicant's counsel called him to the stand, John Jeffery McDonald ("McDonald") was shown a copy of the statement made by Johnny Bradwell in August 1980. He acknowledged that he was "Jeff" referenced in the statement. As to Dinky Taylor's admission, he could not remember the specific date, but he remembered being in the car with Dinky Taylor when he stated that there was something he wanted to "get off his chest," recalling that Dinky Taylor admitted that he killed Olin Wilson and that his girlfriend Pam was the one that drove him on the night of the murder. He also recalled the confrontation that took place between him and Dinky Taylor as outlined in Johnny Bradwell's statement.

During his testimony, McDonald recalled details surrounding a meeting that he had with Lewis. He explained that he and his mother went to meet with Lewis at the Richland County Sheriff's Department. He recalled that he provided Lewis with a written and recorded statement recounting Dinky Taylor's admission. He further recalled that he was not contacted by law enforcement or the State prior to trial. He indicated that the first person he had spoken with since Lewis was Applicant's investigator in conjunction with the current PCR action.

D. Testimony of Ronnie Wilson

When he took the stand, Ronnie Wilson explained that he is the nephew of the victim and that he vaguely remembered testifying at Applicant's last evidentiary hearing. Ronnie Wilson testified that he received a telephone call from Johnny Bradwell in 2004, during which Johnny Bradwell informed him that Dinky Taylor killed Olin Wilson and that his girlfriend Pam was present at the scene. He explained that Johnny Bradwell was

impossible to locate, so he could not follow up with him regarding that phone call, and that he never told anyone about the phone call with Johnny Bradwell.

He further testified that he was present at the family reunion in April 2008 when Richard Blizzard made his admission, which confirmed what Johnny Bradwell had told him during the telephone call. He explained that he had tried to locate Johnny Bradwell for Applicant, but he had been unsuccessful. Ronnie Wilson concluded that it was his belief that Applicant was innocent of the murder of Olin Wilson.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the entire record and has heard the testimony and arguments presented at the hearing and has had the opportunity to observe each witness and pass upon his or her credibility and has weighed the testimony accordingly. The Court finds Applicant's testimony and the other witnesses' testimony to be credible and highly persuasive regarding Applicant's claim of innocence. Moreover, the Court notes Respondent did not submit any evidence or call any witnesses to refute Applicant's testimony or his witnesses. Based on the foregoing, the Court makes the following findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003).

1. Based upon the testimony and arguments presented at the evidentiary hearing, this Court finds and concludes that Applicant should be granted a new trial on his allegation of newly discovered evidence. This Court finds that to deny Applicant a new trial in light of the record before it, the testimony presented at the evidentiary hearing, and Applicant's relentless claims of innocence would constitute "a denial of fundamental fairness shocking to the judicial sense of justice." Butler v. State, 302 S.C.

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466, 468, 397 S.E.2d 87, 88 (1990); See also Johnson v. Catoe, 345 S.C. 389, 401, 548 S.E.2d 587, 593 (2001) (Waller, J., dissenting).

2. To prevail on his claims, Applicant "must show the after-discovered evidence: 1) is such that it would probably change the result if a new trial were granted; 2) has been discovered since the trial; 3) could not in the exercise of due diligence have been discovered prior to trial; 4) is material; and 5) is not merely cumulative or impeaching." State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993)); see also Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983). The Court finds that in its totality the testimony and evidence before this Court meets the test set forth in Spann and Hayden.

3. Here, Applicant has presented three separate pieces of newly discovered evidence, but each bit of evidence is interrelated and pertinent to the allegations made at his evidentiary hearing. After his own testimony, Applicant presented the testimony of Fleming regarding the dismissal of charges against Tommy Campbell and his boasting about putting his own brother behind bars. Secondly, Applicant presented the testimony of McDonald that corroborated the Johnny Bradwell statement and established that he provided exculpatory information to law enforcement that was not made known to Applicant. Finally, Applicant presented the testimony of Tally and Ronnie Wilson regarding the admission made by Johnny Bradwell and by Richard Blizzard regarding the guilt of Dinky Taylor.

4. To find that Applicant has satisfied the test for newly discovered evidence, this Court must first determine if the evidence has "been discovered since trial" and could not in the exercise of due diligence been discovered prior to trial." State v. Spann, 334

S.C. at 619, 513 S.E.2d at 99. Regarding the testimony of Fleming, this Court finds no reference to Fleming in the record of the prior proceedings nor does it appear from his testimony that he had any form of communication with anyone involved in Applicant's case prior to the present PCR action. Therefore, this Court finds that the testimony of Fleming meets the discovery requirements set forth in Spann.

5. The Court makes the same findings regarding the testimony of McDonald. McDonald testified that he provided exculpatory information to Lt. Lewis, which was never relinquished to Applicant. To support this conclusion, the Court turns to the testimony of Lt. Lewis at the prior PCR where he explained that if he had received any corroborating information that Dinky Taylor committed the murder he would be in jail. (PCR, 102). This testimony clearly omits a reference to the information provided by McDonald, which begs the question of how Applicant could have previously discovered this information if it was not disclosed by law enforcement. It is also evident from Applicant's testimony and the testimony of the victim's family that Applicant exceeded the standard of due diligence in trying to pursue evidence to establish his innocence. It is telling that Applicant argued at trial and his prior PCR that Dinky Taylor was involved in the crime, but McDonald was not called as a witness. The Court finds that this clearly substantiates Applicant's claim that this information was not previously known to him.

6. As to the testimony of Tally and Ronnie Wilson, the Court further finds that Applicant has met the discovery and due diligence prongs set forth in Spann. Both witnesses testified that they received information regarding Applicant's innocence from Richard Blizzard at a family reunion in April 2008. Upon review of the available records in this case, the Court finds no prior reference to Richard Blizzard or his admission that

he was present when the murder occurred and saw Dinky Taylor "blow [the victim's] head off." Furthermore, the Court notes the unique nature of this case in the immense support Applicant has received from the victim's family. It is clear that the victim's family has assisted Applicant in trying to prove his innocence from the very beginning of this case. In consideration of these facts, the Court finds that evidence has been newly discovered since trial and that Applicant exercised due diligence in discovering it.

7. As to the remaining requirements, Applicant must show that the newly discovered evidence would change the outcome of a new trial, that the evidence is material, and that it is not merely cumulative or impeaching. State v. Spann, 334 S.C. at 619, 513 S.E.2d at 99. This Court finds that standing alone these three pieces of evidence may not be material or outcome determinative, but taken as a whole the evidence clearly satisfies the Spann standard. Therefore, this Court shall next address each piece of evidence to determine if it is outcome determinative, material, and not merely cumulative or impeaching.

8. Specifically, this Court finds that Fleming's testimony substantiates Applicant's claim that Tommy Campbell was an unreliable witness, yet this Court cannot find that, standing alone, this evidence meets the standard set forth in Spann. Furthermore, this Court finds that Tommy Campbell did not testify at the trial, so this evidence may not have even been admissible. Therefore, this Court finds that the testimony of Fleming is material, but it may not impact a new trial or serve to be more than cumulative or impeaching.

9. Next, the Court must determine if McDonald's and the Wilsons' testimony satisfies the requirements of Spann. In considering this testimony, the Court must also

review the testimony of Lt. Lewis. At trial Lt. Lewis stated that he investigated approximately two hundred fifty people, and Dinky Taylor was a potential suspect in the case. (Trial, 345). At the prior evidentiary hearing, Lt. Lewis recalled speaking to each individual referenced in Johnny Bradwell's statement, and he testified that he was unable to confirm any of the information contained in the statement. (PCR, 95-96). When asked what he would have done if he had been able to confirm Johnny Bradwell's statement, Lt. Lewis responded that Dinky Taylor would be in jail. (PCR, 102).

10. At the PCR hearing, McDonald was adamant that he met with Lt. Lewis and provided information that confirmed Johnny Bradwell's statement. Based upon his testimony, the information he provided to Lt. Lewis implicated Dinky Taylor and exculpated Applicant, yet it appears that this information was not made known to Applicant prior to his trial or PCR. Because Lt. Lewis is now deceased, the Court cannot question him on this matter, but the Court finds that the testimony and record before it rises to the level of a potential Brady violation. It is well-established that the prosecution has a duty to disclose all favorable evidence to a criminal defendant, and Applicant has testified that this evidence was never provided to him. See Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963); Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555 (1995); Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006).

11. Beyond the potential Brady violation, the Court also finds that McDonald's testimony is supported by the information given to the Wilsons that Dinky Taylor was responsible for the murder of the victim. The evidence before this Court amounts to an admission that has been corroborated but not previously disclosed to Applicant. The U.S. Supreme Court has held:

A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. The admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.

Arizona v. Fulminante, 499 U.S. 279, 296, 111 S. Ct. 1246, 1257 (1991) (Internal citations and punctuation omitted); see also Johnson v. Catoe, 345 S.C. 389, 401, 548 S.E.2d 587, 593 (2001). The Court finds that the evidence regarding the admission of Dinky Taylor would very likely have a "profound impact on a jury" if a new trial were had.

12. Furthermore, it is also vital to examine the testimony of Lewis at the prior evidentiary hearing regarding his position on the outcome of Applicant's trial. When he was asked if he was satisfied with the outcome of the case, Lewis responded that he was not. (PCR, 101). Specifically, the following testimony was elicited by the State:

Mr. Valenta: Were you willing to provide information to the Attorney General's Office, and assist in the prosecution of Mr. Campbell just because you thought the State could prove it's [sic] case whether or not he was guilty?

Lt. Lewis: Well, based upon the information that I had, I felt that Mr. Campbell knew something about this incident, and based on the statement that he gave me and so forth. But I still felt that there was more people or possible other people involved.

(PCR, 101). As stated by Lewis, the Court finds that due to the testimony presented at the evidentiary hearing the evidence against Applicant does not support the murder conviction that has placed Applicant in prison for life. This Court finds that "[e]very practicable precaution must be taken to insure that the verdict really speaks the truth, for if it does not an innocent man may be imprisoned." Newsom v. U.S., 311 F.2d 74, 76 (5th

Cir. 1962). For this reason and those addressed above, the Court finds that the newly discovered evidence is material, is not merely cumulative or impeaching and would change the outcome of a new trial. Therefore, Applicant has satisfied the test set forth in Spann and must be granted a new trial.

CONCLUSION

Based on the foregoing, **NOW THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED:**

1. That Applicant has met his burden of proof as to his allegation of newly discovered evidence;
2. That the Application for Post-Conviction Relief be granted;
3. That Applicant's conviction shall be vacated and a new trial granted;
4. That Applicant shall be released from the custody of South Carolina Department of Corrections and transferred to the custody of Richland County pending the disposition of his case.

AND, IT IS SO ORDERED.



The Honorable J. Michelle Childs
Presiding Judge
Fifth Judicial Circuit

This 17th day of June, 2010.
Columbia, South Carolina.